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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,332	10/07/2004	Jean-Claude Hauer	255442US6PCT	1839
22850	7590	04/04/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
SMALLEY, JAMES N				
ART UNIT		PAPER NUMBER		
3781				
NOTIFICATION DATE		DELIVERY MODE		
04/04/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/509,332

**Applicant(s)**

HAUER ET AL.

**Examiner**

JAMES N. SMALLEY

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 18-21 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 17 and 22-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 10/07/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20-21 recites the limitation "the second hinge" in line 2 of each claim. There is insufficient antecedent basis for this limitation in the claim. The second hinge is defined in claim 17, from which claims 20-21 do not depend.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 16, 18-19, 26 and 29-30 rejected under 35 U.S.C. 102(b) as being anticipated by Ueda US 2,300,076.

Ueda '076 teaches a frame (12), a cover (C) articulated relative to the frame about a first hinge comprising a first cover knuckle (18) cooperating with a first frame knuckle (10), a locking device (15) which maintains the cover in a locked-open configuration, an unlocked configuration wherein the cover is in a second position relative to the frame, and wherein the first hinge is configured to permit pivoting of the cover, while bearing on the frame, around a second axis (see figure 3) perpendicular to the first and

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which extends horizontally, such that the cover can be moved from the first position relative to the frame toward the second position and vice versa.

Regarding claims 18-19, because the second axis occurs through the middle of cover knuckle (18), the first distance from the center of gravity to the second axis will be zero, and thus the second distance will be more than three times as much.

Regarding claim 30, it can be seen in figures 1-2 that the locked open position of the lid, while not exactly 90 degrees, is read to be "substantially" 90 degrees.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 27-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda US 2,300,076 as applied above under 35 U.S.C. 102(b) to claims 16, 18-19, 26 and 29-30, in view of Long et al. US 4,139,114.

Ueda '076 as applied above teaches all limitations substantially as claimed, but fails to teach the cover being a triangle, or even a right triangle.

Long '114 teaches a variety of container shapes, with correspondingly shaped covers, teaching a circular/cylindrical container in figures 4-6, and right-triangle shaped containers and covers in figure 7. The benefit of right-triangle shaped containers is that they are able to be nested together as shown in the figure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the container and thus the cover of Ueda '076, forming it in the shape of a right triangle, as taught to be within ordinary skill by Long '114, and motivated by the benefit of allowing four containers to nest together and reduce the amount of space they collectively take up. Furthermore,

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Examiner notes a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

***Allowable Subject Matter***

8. Claims 17 and 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 20-21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims, because Ueda '076 does not teach a second hinge.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892 citing relevant references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James N Smalley/  
Examiner, Art Unit 3781

/Anthony D Stashick/  
Anthony Stashick  
Supervisory Patent Examiner, Art Unit 3781